

AMENDED IN SENATE AUGUST 27, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 289**

**Introduced by Assembly Member Oropeza**

February 16, 2001

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An act to amend Section 2401 of the Business and Professions Code, and to amend Sections 11877.6 and 11877.7 of the Health and Safety Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 289, as amended, Oropeza. Healing arts.

Existing law requires the State Department of Alcohol and Drug Programs to license and regulate narcotic treatment programs. The Medical Practice Act restricts the employment of licensed physicians and surgeons and podiatrists by a corporation or other artificial legal entity, subject to specified exemptions.

This bill would exempt a narcotic treatment ~~clinic~~ program regulated by the department from these restrictions on the employment of licensed physicians and surgeons and podiatrists, provided that the ~~clinic~~ program does not interfere with, control, or otherwise direct a physician and surgeons's professional judgment.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. *It is the intent of the Legislature that if the State*
- 2 *Department of Alcohol and Drug Programs discovers evidence,*

1 *records, or activities indicative of fraud or abuse, as defined in*  
2 *Section 14043.1 of the Welfare and Institutions Code, the State*  
3 *Department of Alcohol and Drug Programs and the State*  
4 *Department of Health Services shall work cooperatively to*  
5 *investigate and refer fraud or abuse cases to the appropriate law*  
6 *enforcement agencies.*

7 SEC. 2. Section 2401 of the Business and Professions Code is  
8 amended to read:

9 2401. (a) Notwithstanding Section 2400, a clinic operated  
10 primarily for the purpose of medical education by a public or  
11 private nonprofit university medical school, which is approved by  
12 the Division of Licensing or the Osteopathic Medical Board of  
13 California, may charge for professional services rendered to  
14 teaching patients by licensees who hold academic appointments on  
15 the faculty of the university, if the charges are approved by the  
16 physician and surgeon in whose name the charges are made.

17 (b) Notwithstanding Section 2400, a clinic operated under  
18 subdivision (p) of Section 1206 of the Health and Safety Code may  
19 employ licensees and charge for professional services rendered by  
20 those licensees. However, the clinic shall not interfere with,  
21 control, or otherwise direct a physician and surgeon's professional  
22 judgment in a manner prohibited by Section 2400 or any other  
23 provision of law.

24 (c) Notwithstanding Section 2400, a ~~clinic~~ *narcotic treatment*  
25 *program* operated under Section 11876 of the Health and Safety  
26 Code and regulated by the State Department of Alcohol and Drug  
27 Programs, may employ licensees and charge for professional  
28 services rendered by those licensees. However, the ~~clinic~~ *narcotic*  
29 *treatment program* shall not interfere with, control, or otherwise  
30 direct a physician or surgeon's professional judgment in a manner  
31 prohibited by Section 2400 or any other provision of law.

32 SEC. 3. Section 11877.6 of the Health and Safety Code is  
33 amended to read:

34 11877.6. The director may deny the application for initial  
35 issuance of a license if the applicant, or any partner, officer,  
36 director, ~~or~~ 10 percent or greater shareholder, *or person proposed*  
37 *to be employed by the applicant under the authority of subdivision*  
38 *(c) of Section 2401:*

39 (a) Fails to meet the qualifications for licensure established by  
40 the department pursuant to this article. However, the director may

1 waive any established qualification for licensure of a narcotic  
2 treatment program if he or she determines that it is reasonably  
3 necessary in the interests of the public health and welfare.

4 (b) Was previously the holder of a license issued under this  
5 article, and the license was revoked and never reissued or was  
6 suspended and not reinstated, or the holder failed to adhere to  
7 applicable laws and regulations regarding narcotic treatment  
8 programs while the license was in effect.

9 (c) Misrepresented any material fact in the application.

10 (d) Committed any act involving fraud, dishonesty, or deceit,  
11 with the intent to substantially benefit himself or herself or another  
12 or substantially injure another, and the act is substantially related  
13 to the qualification, functions, or duties of, or relating to, a  
14 narcotic treatment program license.

15 (e) Was convicted of any crime substantially related to the  
16 qualifications, functions, or duties of, or relating to, a narcotic  
17 treatment program license.

18 (f) The director, in considering whether to deny licensure under  
19 subdivision (d) or (e), shall determine whether the applicant is  
20 rehabilitated after considering all of the following criteria:

21 (1) The nature and severity of the act or crime.

22 (2) The time that has elapsed since the commission of the act  
23 or crime.

24 (3) The commission by the applicant of other acts or crimes  
25 constituting grounds for denial of the license under this section.

26 (4) The extent to which the applicant has complied with terms  
27 of restitution, probation, parole, or any other sanction or order  
28 lawfully imposed against the applicant.

29 (5) Other evidence of rehabilitation submitted by the applicant.

30 (g) With respect to any other license issued to an applicant to  
31 provide narcotic treatment services, violated any provision of this  
32 article or regulations adopted under this article that relate to the  
33 health and safety of patients, the local community, or the general  
34 public. Violations include, but are not limited to, violations of laws  
35 and regulations applicable to take-home doses of methadone,  
36 urinalysis requirements, and security against redistribution of  
37 replacement narcotic drugs. In these cases, the department shall  
38 deny the application for an initial license unless the department  
39 determines that all other licensed narcotic treatment programs

1 maintained by the applicant have corrected all deficiencies and  
2 maintained compliance for a minimum of six months.

3 *SEC. 4. Section 11877.7 of the Health and Safety Code is*  
4 *amended to read:*

5 11877.7. (a) The director shall suspend or revoke any license  
6 issued under the provisions of this article, or deny an application  
7 to renew a license or to modify the terms and conditions of a  
8 license, upon any violation by the licensee of any provision of this  
9 article or regulations adopted under this article that presents an  
10 imminent danger of death or severe harm to any participant of the  
11 program or a member of the general public.

12 (b) The director may suspend or revoke any license issued  
13 under this article, or deny an application to renew a license or to  
14 modify the terms and conditions of a license, upon any of the  
15 following grounds and in the manner provided in this article:

16 (1) Violation by the licensee of any laws or regulations of the  
17 United States Food and Drug Administration or the United States  
18 Department of Justice, Drug Enforcement Administration ~~which~~  
19 *that* are applicable to narcotic treatment programs.

20 (2) Any violation that relates to the operation or maintenance  
21 of the program that has an immediate relationship to the physical  
22 health, mental health, or safety of the program participants or  
23 general public.

24 (3) Aiding, abetting, or permitting the violation of, or any  
25 repeated violation of, any of the provisions set forth in subdivision  
26 (a) or in paragraph (1) or (2).

27 (4) Conduct in the operation of a narcotic treatment program  
28 ~~which that~~ is inimical to the health, welfare, or safety of either an  
29 individual in, or receiving services from, the program, the local  
30 community, or the people of the State of California.

31 (5) The conviction of the licensee, or any partner, officer,  
32 director, ~~or~~ 10 percent or greater shareholder, *or person employed*  
33 *under the authority of subdivision (c) of Section 2401 of the*  
34 *Business and Professions Code* at any time during licensure, of a  
35 crime substantially related to the qualifications, functions, or  
36 duties of, or relating to, a narcotic treatment program licensee.

37 (6) The commission by the licensee, or any partner, officer,  
38 director, ~~or~~ 10 percent or greater shareholder, *or person employed*  
39 *under the authority of subdivision (c) of Section 2401 of the*  
40 *Business and Professions Code* at any time during licensure, of any

1 act involving fraud, dishonesty, or deceit, with the intent to  
2 substantially benefit himself or herself or another, or substantially  
3 to injure another and which act is substantially related to the  
4 qualifications, functions, or duties of, or relating to, a narcotic  
5 treatment program licensee.

6 (7) Diversion of narcotic drugs. A program's failure to  
7 maintain a narcotic drug reconciliation system that accounts for all  
8 incoming and outgoing narcotic drugs, as required by  
9 departmental or federal regulations, shall create a rebuttable  
10 presumption that narcotic drugs are being diverted.

11 (8) Misrepresentation of any material fact in obtaining the  
12 narcotic treatment program license.

13 (9) Failure to comply with a department order to cease  
14 admitting patients or to cease providing patients with take-home  
15 dosages of replacement narcotic drugs.

16 (10) Failure to pay any civil penalty assessed pursuant to  
17 paragraph (3) of subdivision (a) of Section 11877.14 where the  
18 penalty has become final, unless payment arrangements  
19 acceptable to the department have been made.

20 (11) *The suspension or exclusion of the licensee or any partner,*  
21 *officer, director, 10 percent or greater shareholder, or person*  
22 *employed under the authority of subdivision (c) of Section 2401 of*  
23 *the Business and Professions Code from the Medicare, Medicaid,*  
24 *or Medi-Cal programs.*

25 (c) Prior to issuing an order pursuant to this section, the director  
26 shall ensure continuity of patient care by the program's guarantor  
27 or through the transfer of patients to other licensed programs. The  
28 director may issue any needed license or amend any other license  
29 in an effort to ensure that patient care is not impacted adversely by  
30 an order issued pursuant to this section.

